

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

UNITED STATES OF AMERICA

PLAINTIFF

v.

CAUSE NO. 1:10CV550-LG-RHW

**BEYOND BELIEF, One 43 foot 2006
Silverton 39 Marine Motor Yacht,
United States Coast Guard number
1192235**

DEFENDANT

**ORDER GRANTING CLAIMANT BENT MARINE, INC.'S
MOTION FOR SUMMARY JUDGMENT**

BEFORE THE COURT is the Motion for Summary Judgment [24] filed by Bent Marine, Inc., a claimant lienholder in this civil forfeiture matter. Victor Planetta filed a claim, in which he disputes the validity of Bent Marine's lien on the vessel at issue and asks that the entire proceeds from the sale of the vessel be applied to the \$1,000,000 in restitution Planetta was ordered to pay upon his conviction for violation of 18 U.S.C. § 641. Bent Marine seeks summary judgment as to Planetta's claim, asserting that he lacks both statutory standing and constitutional standing to assert a claim. Upon reviewing the submissions of the parties and the applicable law, the Court finds that the Motion for Summary Judgment filed by Bent Marine should be granted, and the untimely claim submitted by Planetta should be dismissed as a matter of law.

FACTS

After Hurricane Katrina, Victor and Eileen Planetta received disaster assistance loans from the Small Business Administration totaling \$1,000,000. One week after the Planettas deposited funds received from the SBA in their bank account, they purchased a vessel named *Beyond Belief* from Bent Marine for

\$389,923. Ownership of the vessel was later transferred to LA Home Recovery LLC. Victor Planetta served as the registered agent for this company, and Eileen Planetta served as a member of the company.

Criminal charges were filed against the Planettas as a result of their misuse of the SBA funds. Victor pled guilty to making false statements in violation of 18 U.S.C. § 1001. He was sentenced to serve three years of probation and to pay \$1,000,000 in restitution to the SBA. As part of the plea agreement, Victor and the Government agreed to forfeiture of the vessel, with proceeds from the sale of the vessel being credited to the restitution owed by Victor. Eileen is participating in a pretrial diversion program.

The Government filed the present civil lawsuit seeking forfeiture of the vessel. LA Home Recovery and both of the Planettas were served with a copy of the Verified Complaint for Forfeiture on March 21, 2011. They were notified that they were required to file a verified claim within thirty-five days. LA Home Recovery filed a Verified Claim on April 13, 2011.

An Agreed Order of Forfeiture [17], signed and agreed to by the Government, the Planettas, and LA Home Recovery, was entered on November 5, 2012. The parties to the Agreed Order, including Victor Planetta, agreed that the vessel would be forfeited to the Government and they agreed to withdraw any and all claims to the vessel. The Agreed Order of Forfeiture also provides, "That upon the sale of the 2006 Silverton Marine yacht named 'Beyond Belief,' by the government, said proceeds from the sale shall be credited against the restitution ordered in Criminal Cause Number 1:11cr90-LG-RHW against Victor Planetta." (Order at 4, ECF No. 17).

Bent Marine filed a claim on November 27, 2012, asserting that it performed certain maintenance and other services related to the vessel but was never paid. It had filed a Notice of Claim of Lien with the Coast Guard on December 10, 2009. The Government does not object to Bent Marine's claim and has represented to the Court that it intends to submit an agreed order providing that Bent Marine's claim totaling \$10,462.12 will be repaid from proceeds of the sale of the vessel. Victor filed a Verified Claim on December 18, 2012, objecting to Bent Marine's claim. He claims that the lien has expired, and he asks that all proceeds from the sale of the vessel be applied to the restitution he was ordered to pay to the SBA. Bent Marine has filed the present Motion for Summary Judgment, asserting that Victor's claim is untimely, that he withdrew any and all claims he had to the vessel, and that he now has no ownership rights in the vessel. Victor continues to assert that the lien expired, and he also claims that he does not owe anything to Bent Marine, because he did not authorize Bent Marine to perform the services rendered.

DISCUSSION

Rule G(5)(a)(ii) of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions provides, "Unless the court for good cause sets a different time, the claim must be filed: (A) by the time stated in a direct notice sent under Rule G(4)(b)." The Notice of Complaint of Forfeiture served on Victor Planetta on March 21, 2011, stated that "any person who asserts an interest in the defendant property must file a verified claim within 35 days after the date of this notice" (Notice, ECF No. 4). Planetta's Verified Claim was filed on December 18, 2012. The

Fifth Circuit and this Court require strict compliance with the claim requirements and deadlines set forth in the Supplemental Rules. *See, e.g., United States v. Real Prop. Located at 14301 Gateway Blvd.*, 123 F.3d 312, 313 (5th Cir. 1997); *United States v. \$25,000.00, U.S. Currency*, No. 1:11CV348-HSO-RHW, 2012 WL 6599918 at *2 (S.D. Miss. 2012). Therefore, Planetta's claim is untimely and must be dismissed.

Nevertheless, it should be noted that the Agreed Order of Forfeiture previously signed by this Court specifically provided that the sale proceeds would be applied to the restitution and did not contemplate the possibility that other claimants would be paid from those proceeds. As a result, the Agreed Order of Forfeiture must be amended or withdrawn before the Court can require that additional claimants be paid from the sale proceeds.

CONCLUSION

For the foregoing reasons, the Court finds that the Verified Claim filed by Victor Planetta is untimely and must be dismissed with prejudice.

IT IS THEREFORE, ORDERED AND ADJUDGED that the Motion for Summary Judgment [24] filed by Bent Marine, Inc., is **GRANTED**. The Verified Claim of Victor Planetta is **DISMISSED WITH PREJUDICE**.

SO ORDERED AND ADJUDGED this the 8th day of April, 2013.

s/ Louis Guirola, Jr.
LOUIS GUIROLA, JR.
CHIEF U.S. DISTRICT JUDGE